

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

DON THACKER, as Chapter 7 Trustee of the
**BANKRUPTCY ESTATE OF JANET
ELIZABETH PERKINS**,

Plaintiff,

v.

**PROVIDENCE HEALTH & SERVICES—
OREGON**, an Oregon corporation, d.b.a.
**PROVIDENCE ST. VINCENT MEDICAL
CENTER**,

Defendant.

Case No. 3:13-cv-01447-ST

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Janice M. Stewart issued Findings and Recommendation in this case on February 2, 2015. Dkt. 39. Judge Stewart recommended that Defendant's motion for summary judgment be granted.

Under the Federal Magistrates Act ("Act"), the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C.

§ 636(b)(1)(C). If a party files objections to a magistrate's findings and recommendations, "the

court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

Plaintiff timely filed an objection. Dkt. 41. Plaintiff argues that Judge Stewart incorrectly determined (1) that Janet Perkins was not subject to greater scrutiny after she was injured in the workplace and took protected medical leave; and (2) that Ms. Perkins’s use of protected leave was not a negative factor in the decision to terminate her employment. The Court has reviewed *de novo* those portions of Judge Stewart’s Findings and Recommendation to which Plaintiff has objected, as well as Plaintiff’s objections and Defendant’s response. The Court agrees with Judge Stewart’s reasoning regarding both objections and adopts those portions of the Findings and Recommendation.

For those portions of a magistrate’s findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate’s findings and recommendations if objection is made, “but not otherwise”). Although in the absence of objections no review is required, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Federal Rule of Civil Procedure 72(b) recommend that “[w]hen no timely objection is filed,” the Court review the magistrate’s recommendations for “clear error on the face of the record.”

For those portions of Judge Stewart's Findings and Recommendation to which neither party has objected, this Court follows the recommendation of the Advisory Committee and reviews those matters for clear error on the face of the record. No such error is apparent.

The Court ADOPTS Judge Stewart's Findings and Recommendation, Dkt. 39. Defendant's motion for summary judgment (Dkt. 16) is GRANTED. Plaintiff's claims are DISMISSED with prejudice.

IT IS SO ORDERED.

DATED this 26th day of March, 2015.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge